

2013 DRAFTING REQUEST

Bill

Received:	4/4/2013	Received By:	jkuesel
Wanted:	As time permits	Same as LRB:	
For:	Gary Hebl (608) 266-7678	By/Representing:	Mike Murray
May Contact:		Drafter:	jkuesel
Subject:	State Finance - claims agnst st Criminal Law - miscellaneous Correctional System - misc Administrative Law Tax, Individual - income	Addl. Drafters:	phurley mshovers
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Hebl@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Treatment of Wrongfully Convicted Persons

Instructions:

Per 2011 AB-452 and attached E mail, 4/4/13.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rchampag 7/18/2013	scalvin 7/31/2013	phenry 8/1/2013	_____			
/1	jkuesel 9/19/2013			_____	srose 8/1/2013		State S&L Tax
/2	rchampag	csicilia	jfrantze	_____	srose	lparisi	State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	9/20/2013	9/25/2013	9/25/2013	_____	9/25/2013	10/7/2013	S&L Tax

FE Sent For:

9/27/2013 ~~12:00:00 AM~~

<END>

2013 DRAFTING REQUEST

Bill

Received:	4/4/2013	Received By:	jkuesel
Wanted:	As time permits	Same as LRB:	
For:	Gary Hebl (608) 266-7678	By/Representing:	Mike Murray
May Contact:		Drafter:	jkuesel
Subject:	State Finance - claims agnst st Criminal Law - miscellaneous Correctional System - misc Administrative Law Tax, Individual - income	Addl. Drafters:	phurley mshovers
		Extra Copies:	

Submit via email: **YES**
 Requester's email: **Rep.Hebl@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Treatment of Wrongfully Convicted Persons

Instructions:

Per 2011 AB-452 and attached E mail, 4/4/13.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rchampag 7/18/2013	scalvin 7/31/2013	phenry 8/1/2013	_____			
/1	jkuesel 9/19/2013			_____	srose 8/1/2013		State S&L Tax
/2	rchampag	csicilia	jfrantze	_____	srose		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	9/20/2013	9/25/2013	9/25/2013	_____	9/25/2013		S&L
							Tax

FE Sent For:

<END>

09-27-2013
("1/2")

see
attached

2013 DRAFTING REQUEST

Bill

Received: 4/4/2013 Received By: jkuesel
Wanted: As time permits Same as LRB:
For: Gary Hebl (608) 266-7678 By/Representing: Mike Murray
May Contact: Drafter: jkuesel
Subject: State Finance - claims agnst st
Criminal Law - miscellaneous
Correctional System - misc
Administrative Law
Tax, Individual - income Addl. Drafters: phurley
mshovers
Extra Copies:

Submit via email: YES
Requester's email: Rep.Hebl@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Treatment of Wrongfully Convicted Persons

Instructions:

Per 2011 AB-452 and attached E mail, 4/4/13.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rchampag 7/18/2013	scalvin 7/31/2013	phenry 8/1/2013	_____			
/1		1/2 cjs 9/25 13	9/25	9/25	srose 8/1/2013		State S&L Tax

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received:	4/4/2013	Received By:	jkuesel
Wanted:	As time permits	Same as LRB:	
For:	Gary Hebl (608) 266-7678	By/Representing:	Mike Murray
May Contact:		Drafter:	jkuesel
Subject:	State Finance - claims agnst st Criminal Law - miscellaneous Correctional System - misc Administrative Law Tax, Individual - income	Addl. Drafters:	phurley mshovers
		Extra Copies:	

Submit via email: **YES**
 Requester's email: **Rep.Hebl@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Treatment of Wrongfully Convicted Persons ✓

Instructions:

Per 2011 AB-452 and attached E mail, 4/4/13.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/? jkuesel

/1 SAC
07/25/2013

Handwritten signatures and initials are present over the Drafting History table, including what appears to be 'ph' and 'jm'.

FE Sent For:

<END>

Kuesel, Jeffery

From: Murray, Mike
Sent: Thursday, April 04, 2013 12:20 PM
To: Shovers, Marc; Hurley, Peggy; Kuesel, Jeffery
Cc: Bruce, Cory; kafindle@facstaff.wisc.edu
Subject: Redraft of 2011 AB 452

Hi Marc, Peggy and Jeff:

Rep. Hebl and Rep. Bies will be coauthoring a redraft of 2011 AB 452 (LRB 0066/2). They would like to have the bill redrafted as is except for the following changes:

1. The draft should make it clear that an exoneree shall receive the full \$50,000 compensation per year of incarceration for any part of a year they serve. So, if someone is wrongfully imprisoned for 2 years and one day, they should be eligible for \$150,000 compensation. *JMK*
2. The draft should include a provision that would allow an exoneree's survivors/heirs to receive the monetary compensation that would be due to the exoneree in cases where the exoneree dies before the compensation award process is completed or in cases where the exoneree is exonerated posthumously. Please let me know if you need further clarification regarding this provision. *64d determine the limit?*
3. Please include a provision that would disqualify an exoneree from continuing to receive any benefits under the bill if the exoneree is convicted of a serious or violent felony after s/he is released. I believe that Rep. Bies is currently working on juvenile justice legislation that includes a list that he would like to use. I have copied Cory from Rep. Bies' office so that she can provide you with the appropriate language. *PJH/JMK* *S. 941.291(1)(b)*

Thank you for all of your help with this. Please do not hesitate to contact me or Cory should you have any further questions.

Thanks,

Mike

Mike Murray
Office of Rep. Gary Hebl
46th Assembly District

use of violent crime
362 (1)(c)
but don't use misdemeanors

7-17
h/c with Cory - for "violent crime"

Kuesel, Jeffery

From: Bruce, Cory
Sent: Monday, April 29, 2013 10:21 AM
To: Murray, Mike; Kuesel, Jeffery
Subject: RE: Redraft of 2011 AB 452

Works for me. Thanks.
Cory

From: Murray, Mike
Sent: Monday, April 29, 2013 10:15 AM
To: Bruce, Cory; Kuesel, Jeffery
Subject: RE: Redraft of 2011 AB 452

OK, thanks Cory. I apologize for the error on my part. Let's just leave misdemeanors out then for simplicity's sake and include the rest of the felony violent crimes list under 939.632(1)(e). We can think about adding some misdemeanors in as amendment down the road if necessary. How does that sound?

Thanks Jeff.

Mike Murray
Office of Rep. Gary Hebl
46th Assembly District

From: Bruce, Cory
Sent: Monday, April 29, 2013 10:04 AM
To: Murray, Mike; Kuesel, Jeffery
Subject: RE: Redraft of 2011 AB 452

Hi all –
We were looking at violent crimes as defined under: 939.632(1)(e) -

(e) "Violent crime" means any of the following:

1. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.19 (2), (4) or (5), 940.21, 940.225 (1), (2) or (3), 940.235, 940.305, 940.31, 941.20, 941.21, 943.02, 943.06, 943.10 (2), 943.23 (1g), 943.32 (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.051, 948.055, 948.07, 948.08, 948.085, or 948.30 (2) or unders. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.
2. The solicitation, conspiracy or attempt, under s. 939.30, 939.31 or 939.32, to commit a Class A felony.
3. Any misdemeanor under s. 940.19 (1), 940.225 (3m), 940.32 (2), 940.42, 940.44, 941.20 (1), 941.23, 941.235, 941.24 or 941.38 (3).

The attachment you sent earlier was the list of misdemeanors we removed from another bill we're working on (which is all of them except 940.42 and 941.24), but Garey is fine with removing all misdemeanors from this bill if you are and it makes it simpler for drafting purposes.

Cory

From: Murray, Mike
Sent: Monday, April 29, 2013 9:53 AM
To: Bruce, Cory; Kuesel, Jeffery
Subject: RE: Redraft of 2011 AB 452

Oh, I'm sorry Cory, I misunderstood that. Was there a list of violent misdemeanors that Rep. Bies wanted to include in the bill? Sorry for the confusion.

Mike

Mike Murray
Office of Rep. Gary Hebl
46th Assembly District

From: Bruce, Cory
Sent: Monday, April 29, 2013 9:52 AM
To: Murray, Mike; Kuesel, Jeffery
Subject: RE: Redraft of 2011 AB 452

Just to be clear, the list that is attached would be misdemeanors that WOULDN'T be included as part of a list for violent crimes.

From: Murray, Mike
Sent: Monday, April 29, 2013 9:50 AM
To: Kuesel, Jeffery
Cc: Bruce, Cory
Subject: RE: Redraft of 2011 AB 452

Hi Jeff,

I had mentioned in my original email that Rep. Bies' office was working on a list of violent misdemeanors for a different bill that they would like to have included in the AB 452 redraft as offenses that would disqualify an exoneree from receiving social services under the bill. I believe that you (or whoever is drafting that section of the bill) was already drafting a list of violent felonies that would disqualify the exoneree. Anyway, attached is the list of misdemeanors that Rep. Bies would like to include in the AB 452 redraft in addition to the felonies. Thanks so much for your help on this and don't hesitate to contact me should you have any questions.

Mike

<< File: misdemeanors removed from final list.docx >>

Mike Murray
Office of Rep. Gary Hebl
46th Assembly District

From: Kuesel, Jeffery
Sent: Thursday, April 04, 2013 2:59 PM
To: Murray, Mike
Subject: RE: Redraft of 2011 AB 452

Mike,
We will take care of your request.

Jeffery T. Kuesel
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266-6778
Jeffery.Kuesel@legis.wisconsin.gov

From: Murray, Mike
Sent: Thursday, April 04, 2013 12:20 PM
To: Shovers, Marc; Hurley, Peggy; Kuesel, Jeffery
Cc: Bruce, Cory; kafindle@facstaff.wisc.edu
Subject: Redraft of 2011 AB 452

Hi Marc, Peggy and Jeff:

Rep. Hebl and Rep. Bies will be coauthoring a redraft of 2011 AB 452 (LRB 0066/2). They would like to have the bill redrafted as is except for the following changes:

1. The draft should make it clear that an exoneree shall receive the full \$50,000 compensation per year of incarceration for any part of a year they serve. So, if someone is wrongfully imprisoned for 2 years and one day, they should be eligible for \$150,000 compensation.
2. The draft should include a provision that would allow an exoneree's survivors/heirs to receive the monetary compensation that would be due to the exoneree in cases where the exoneree dies before the compensation award process is completed or in cases where the exoneree is exonerated posthumously. Please let me know if you need further clarification regarding this provision.
3. Please include a provision that would disqualify an exoneree from continuing to receive any benefits under the bill if the exoneree is convicted of a serious or violent felony after s/he is released. I believe that Rep. Bies is currently working on juvenile justice legislation that includes a list that he would like to use. I have copied Cory from Rep. Bies' office so that she can provide you with the appropriate language.

Thank you for all of your help with this. Please do not hesitate to contact me or Cory should you have any further questions.

Thanks,

Mike

Mike Murray
Office of Rep. Gary Hebl

MISDEMEANORS - Removed from Violent Crime list

940.19(1) – Substantial Battery – Misdemeanor Class

940.225(3m) – Fourth Degree Sexual Assault – Misdemeanor Class A

940.44 – Intimidation of victims; Misdemeanor Class A

941.20(1)(a) – Endangering safety by use of a dangerous weapon - Misdemeanor Class A

941.23 – Carrying a concealed weapon - Misdemeanor Class A

941.235 – Carrying a firearm in a public building - Misdemeanor Class A

941.38(3) – Criminal gang member solicitation and contact - Misdemeanor Class A



State of Wisconsin
~~2011-2012~~ LEGISLATURE

2013



LRB-0060/2

JTK/MES/PJH/sjs/kjt/jd/jf

Sac *and* RAC

2011 ASSEMBLY BILL 452

Dufv

December 29, 2011. Introduced by Representatives BIES, POCAN, BERCEAU, BERNARD SCHABER, BEWLEY, E. COGGS, HEBL, KESSLER, A. OTT, PASCH, POPE-ROBERTS, RINGHAND, ROYS, STASKUNAS and C. TAYLOR, cosponsored by Senators S. COGGS, HOLPERIN and TAYLOR. Referred to Committee on Judiciary and Ethics.

(regenerate)

1 AN ACT *to renumber and amend* 775.05 (2); *to amend* 20.505 (4) (d), 40.51 (1),
2 ~~227.03 (5), 775.05 (3) and (4) and 775.05 (5); and to create~~ 20.515 (1) (ds),
3 20.515 (1) (g), 40.515, 71.05 (6) (b) 48., ~~227.43 (1) (bw), 301.051, 775.05 (2) (b),~~
4 ~~775.05 (4m) and (4r), 808.085, 977.05 (4) (jr) and 977.05 (4) (jw)~~ of the statutes;
5 **relating to:** resolution of claims against the state for wrongful imprisonment
6 of innocent persons, exempting from taxation certain amounts an individual
7 receives from the claims board or legislature, and making appropriations.

Analysis by the Legislative Reference Bureau

Currently, the state claims board is directed to hear petitions for compensation by persons who are released from imprisonment for crimes of which they claim to be innocent. The board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing that he or she was innocent. If the board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the board must award the petitioner compensation not to exceed \$25,000 total nor more than \$5,000 for each year of imprisonment. This amount includes any expenses for attorney fees, costs, and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the

ASSEMBLY BILL 452

board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate.

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and who claims to be innocent of the crime for which he or she was imprisoned, the board must refer the petition to the Division of Hearings and Appeals in the Department of Administration (DOA). The bill then allows either DOA or the office of the prosecutor who prosecuted the petitioner to file a written request with the claims board for a hearing within 30 days after the original petition is filed with the board. If a timely request for a hearing is filed, or if the division concludes that it cannot determine the petitioner's eligibility for compensation without a hearing, the division must hold a hearing within 60 days after the petition is filed. If a timely request for a hearing is not filed and the division is able to determine that the petitioner is eligible for compensation without a hearing, the division must decide the matter without a hearing, except that the division must afford a petitioner an opportunity for a hearing before denying compensation to the petitioner. If a hearing is held, the bill allows the petitioner to be represented by a public defender. If a hearing is held, the division appoints a hearing examiner to hear the petition. If no hearing is held, the division decides the matter without a hearing. The hearing examiner makes findings and issues a decision concerning whether the petitioner is entitled to compensation. The findings must be based upon the preponderance of evidence (a lesser evidentiary standard than clear and convincing evidence). The petitioner need not show that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation. If the hearing examiner's finding is in the affirmative, the examiner must award compensation to the petitioner in an amount that the examiner considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the amount of compensation is fixed at a rate of \$50,000 per year, and there is no limit on the total amount of an award. The \$50,000 annual rate is subject to annual adjustment based upon changes in the cost of living. In addition, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The bill provides that no person may file a claim for wrongful imprisonment as a result of his or her conviction for a crime if the person is imprisoned as the result of his or her conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony.

Under current law, the Group Insurance Board, attached to the Department of Employee Trust Funds, contracts on behalf of the state for the purpose of providing health care coverage to state employees. This bill permits individuals who receive compensation from the state for wrongful imprisonment to elect, for up to ten years, health care coverage under plans offered by the Group Insurance Board to state

or any portion thereof

also

imprisoned
imprisoned
if convicted of one or more violent crimes after his or her release from imprisonment

resulting in imprisonment

or be paid an award for such imprisonment

imprisoned

2A

ASSEMBLY BILL 452

employees beginning on January 1, ~~2012~~²⁰¹⁵ Under the bill, these individuals would be required to pay the same health insurance premium amounts that state employees are required to pay, with the balance of the premium cost paid by the state.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department of corrections (DOC) and local aid agencies, and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

The bill also exempts from taxation the payments that an individual, or his or her estate, receives from the claims board, or from the state legislature as a result of claims board action.

The bill initially applies with respect to claims filed by persons who are released on or after January 1, 2006, from imprisonment for crimes of which they claim to be innocent.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- ✕
- 1 **SECTION 1.** 20.505 (4) (d) of the statutes is amended to read:
- 2 20.505 **(4)** (d) *Claims awards.* A sum sufficient for payment of awards made
- 3 by the claims board or department of administration under ss. 16.007, 775.05 (4),
- 4 775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made
- 5 by an act of the legislature arising from a claim filed with the claims board which are
- 6 not directed by law or under s. 16.007 (6m) to be paid from another appropriation.
- ✕
- 7 **SECTION 2.** 20.515 (1) (ds) of the statutes is created to read:
- 8 20.515 **(1)** (ds) *Payment of health insurance premiums for individuals who*
- 9 *receive compensation for wrongful imprisonment.* A sum sufficient to pay the state's

ASSEMBLY BILL 452

SECTION 2

1 share of premium costs for health care benefits and the cost of administering the
2 benefits for individuals under s. ~~40.515~~ 40.516

3 SECTION 3. 20.515 (1) (g) of the statutes is created to read:

4 20.515 (1) (g) *Benefit and coverage payments; health care coverage for*
5 *individuals who receive compensation for wrongful imprisonment. All moneys*
6 *received from individuals under s. ~~40.515~~ 40.516 who elect to be included in a health care*
7 *coverage plan under s. 40.51 (6), for the payment of benefits and the cost of*
8 *administering benefits for the individuals.*

9 SECTION 4. 40.51 (1) of the statutes is amended to read:

10 40.51 (1) The procedures and provisions pertaining to enrollment, premium
11 transmitted and coverage of eligible employees and individuals eligible for health
12 care coverage under s. ~~40.515~~ 40.516 for health care benefits shall be established by contract
13 or rule except as otherwise specifically provided by this chapter.

14 SECTION 5. ~~40.515~~ 40.516 of the statutes is created to read:

15 ~~40.515~~ 40.516 Health care coverage for individuals who receive
16 compensation for wrongful imprisonment. (1) Beginning on January 1, ~~2014~~ 2015
17 any individual who receives compensation under s. 775.05 after the effective date of
18 this subsection [LRB inserts date], may elect coverage under any health care
19 coverage plan offered under s. 40.51 (6) for a period not to exceed 10 years.

20 (2) The individual and the state shall jointly pay the full premium cost of health
21 care coverage and the cost of administering the benefits. The amount that the
22 individual must pay in health insurance premiums shall equal the amount required
23 to be paid by state employees, as determined by the director of the office of state
24 employment relations under s. 40.05 (4) (ah). The remainder of the premium cost for

ASSEMBLY BILL 452

1 health care coverage for these individuals shall be paid from the appropriation
2 account under s. 20.515 (1) (ds).

3 **SECTION 6.** 71.05 (6) (b) ~~116~~⁵¹ of the statutes is created to read:

4 71.05 (6) (b) ~~116~~⁵¹ Any amount received by an individual, or the individual's
5 estate, from the claims board under s. 775.05 (4), from the legislature under the
6 process described in s. 775.05 (4), or from a financial assistance award granted under
7 s. 808.085, in the taxable year that relates to the year in which the payment is
8 received.

9 **SECTION 7.** 227.03 (5) of the statutes is amended to read:

10 227.03 (5) This chapter does not apply to proceedings of the claims board,
11 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that
12 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
13 s. 775.05.

14 **SECTION 8.** 227.43 (1) (bw) of the statutes is created to read:

15 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
16 conducted under s. 775.05.

17 **SECTION 9.** 301.051 of the statutes is created to read:

18 **301.051 Wrongful conviction; transition plan.** Not more than 5 days after
19 a court issues an order for a plan requested by an inmate pursuant to 808.085 (1) (a),
20 the department shall create a transition to release plan for the inmate. The plan shall
21 do all of the following:

22 (1) Provide the inmate with a written list of community resources available to
23 the inmate upon his or her release from prison, including temporary housing and
24 emergency shelters, food banks, education and job assistance, and health care

ASSEMBLY BILL 452

SECTION 9

1 services in the county into which the inmate will be released. The department shall
 2 maintain ⁼up_{to}⁼date lists with contact information for each county in the state.

3 (2) Provide the inmate with an individual counseling session with a person
 4 trained by the department or the county into which the inmate will be released to
 5 assist inmates in the transition to release from prison. *for the inmate to meet*

6 (3) Schedule an appointment, set for not later than 2 weeks after the inmate's
 7 date of release, with a social worker or aid program administrator for the county into
 8 which the inmate will be released.

9 SECTION 10. 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and
 10 amended to read:

11 775.05 (2) (a) ~~Any~~ Except as provided in par. (b), ^(a)any person who is imprisoned
 12 as the result of his or her conviction for a crime in any court of this state, of which
 13 crime the person claims to be innocent, and who is released from imprisonment for
 14 that crime after March 13, 1980, may petition the claims board for compensation for
 15 such imprisonment. ~~Upon~~ Within 5 days after receipt of the petition, the ~~claims~~
 16 ~~board~~ department of administration shall transmit a copy thereof to the prosecutor
 17 who prosecuted the petitioner and the judge who sentenced the petitioner for the
 18 conviction which is the subject of the claim, or their successors in office, for the
 19 information of these persons.

20 SECTION 11. 775.05 (2) (b) ^{and (c) and (2m) are}of the statutes ~~is~~ created to read:

21 775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as
 22 the result of his or her conviction for a felony in any court of this state arising from
 23 the same course of conduct that resulted in conviction for the crime of which the
 24 person claims to be innocent if the person does not claim to be innocent of that felony.

SECTION 12. 775.05 (3) and (4) of the statutes are amended to read: ✓

JWS
6-24-25

ASSEMBLY BILL 452

1 775.05 (3) ~~After hearing the evidence on the petition, the claims board~~ Upon
2 receipt of a petition under sub. (2) (a), the department of administration shall
3 promptly refer the petition to the division of hearings and appeals. No later than 30
4 days after the petition is filed, the department of administration or the office of the
5 prosecutor who was responsible for prosecuting the petitioner may file a written
6 ~~request with the claims board for an evidentiary hearing on the petition.~~ *The department of administration shall promptly refer the request to the division.*
7 request for a hearing is filed, or if the division concludes that it cannot determine the
8 petitioner's eligibility for compensation without a hearing, the division shall hold a
9 hearing on the petition no later than 60 days after the petition is filed. If no request
10 for a hearing is filed within the time specified in this subsection, and the division is
11 able to determine that the petitioner is eligible for compensation without a hearing,
12 the division shall decide the matter without a hearing, except that the division shall
13 not deny a petition for compensation without affording the petitioner an opportunity
14 for a hearing. The division shall find either that the preponderance of evidence is
15 ~~clear and convincing demonstrates~~ that the petitioner was innocent of the crime for
16 which he or she suffered imprisonment, or that the preponderance of evidence is not
17 ~~clear and convincing does not demonstrate~~ that he or she was innocent.

18 (4) ~~If the claims board~~ division of hearings and appeals finds that the
19 preponderance of evidence demonstrates that the petitioner was innocent and that
20 ~~he or she did not by his or her act or failure to act contribute to bring about the~~
21 ~~conviction and imprisonment for which he or she seeks compensation, the claims~~
22 ~~board of the crime for which he or she was imprisoned, the division shall find the~~
23 amount which will equitably compensate the petitioner, not to exceed \$25,000 and
24 at a rate of compensation not greater than \$5,000 of \$50,000, or the amount
25 determined under sub. (4m), whichever applies, per year, or any portion thereof
 for the imprisonment.

ASSEMBLY BILL 452

SECTION 12

1 ~~Compensation awarded by the claims board~~ In addition, the division shall include
2 find any amount to which the ~~board finds the~~ petitioner is entitled for reasonable,
3 actual attorney fees, together with all costs and disbursements incurred by the
4 petitioner in his or her defense, post-conviction, and compensation proceedings and
5 all fees, surcharges, and restitution paid by the petitioner as a result of his or her
6 arrest and imprisonment. The division shall subtract any moneys received by the
7 petitioner under s. 808.085. If the claims-board division finds that the amount it is
8 able to-award find is not an adequate compensation it shall submit a report specifying
9 an amount which it considers adequate to the chief clerk of each house of the
10 legislature, for distribution to the legislature under s. 13.172 (2). Upon conclusion
11 of the proceeding, the division shall transmit its findings and decision to the claims
12 board, which shall award the compensation specified in the decision and order
13 disbursement of the award to the petitioner ^Y from the appropriation under s. 20.505

14 (4) (d).

15 ^X SECTION 13. 775.05 (4m) and (4r) of the statutes are created to read:

16 775.05 **(4m)** On April 1 of each year, the claims board shall adjust the
17 maximum amount specified in sub. (4) to reflect any changes in the U.S. consumer
18 price index for all urban consumers, U.S. city average, as determined by the U.S.
19 department of labor, for the 12-month period ending on the preceding December 31.
20 The board shall publish the adjusted amount so determined in the Wisconsin
21 administrative register.

22 **(4r)** At any hearing conducted under this section, the petitioner may be
23 represented by counsel of his or her own choosing. The department of administration
24 shall represent the interests of the state.

25 [✓] SECTION 14. 775.05 (5) of the statutes is amended to read:

*or any other individual who
is entitled to receive a
payment*

1 775.05 (5) The claims board shall keep a complete record of ~~its~~ the proceedings
2 in each case petition under this section and of all the evidence related to the petition.
3 The findings and decision of the division of hearings and appeals and the award of
4 the claims board shall be subject to review as provided in ch. 227.

5 SECTION 15. 808.085 of the statutes is created to read:

6 **808.085 Wrongful conviction; relief.** (1) If a court acts under s. 808.08 to
7 release a person from confinement ~~from a prison~~, ^{in a} the person may petition the court
8 for any or all of the following:

9 (a) A court order directing the department of corrections to create a transition
10 to release plan.

11 (b) A financial assistance award not to exceed 133 percent of the federal poverty
12 level for up to 14 months, or while proceedings under s. 775.05 are pending,
13 whichever is shorter.

14 (c) Sealing of all records related to the case. Records sealed under this section
15 shall be accessible to the person but may not be available for public inspection or
16 through the consolidated court automation program case management system.

17 (2) The court shall, within 10 days after it receives the petition under sub. (1),
18 grant the relief sought if the person's criminal conviction was reversed, set aside, or
19 vacated for reasons not inconsistent with the person's innocence of the crime for
20 which he or she was convicted.

21 (3) If a person who is granted relief under this section is subsequently convicted
22 of the same charges for which he or she was granted relief, or if his or her conviction
23 is reinstated, the person shall repay any financial assistance award granted under
24 this section and all records related to the case shall be unsealed.

(4) To the extent it is not contrary to or inconsistent with federal law, financial assistance a person receives pursuant to this section may not be included as income for the purpose of determining whether the person is indigent under rules promulgated under ch. 977¹ or for the purpose of determining the person's eligibility for any program for which the department of health services or the department of children and families provides services, benefits, or other assistance under ch. 49.[✓]

[✕]
SECTION 16. 977.05 (4) (jr) of the statutes is created to read:

977.05 (4) (jr) At the request of a person determined by the state public defender to be indigent or upon referral of any court, represent the person in proceedings under s. 775.05.[✓]

[✕]
SECTION 17. 977.05 (4) (jw) of the statutes is created to read:

977.05 (4) (jw) At the request of an inmate determined by the state public defender to be indigent or upon referral of any court, represent the person in proceedings under s. 808.085.[✓]

SECTION 18. Initial applicability.

(1) This act first applies with respect to petitions filed by persons who are released on or after January 1, 2006, from imprisonment for crimes of which they claim to be innocent. If a person was released from imprisonment on or after January 1, 2006, and accepted compensation from this state for wrongful imprisonment prior to the effective date of this subsection, the person may petition for additional compensation and compensation shall be awarded to the extent payable under section 775.05[✓] of the statutes notwithstanding any release signed by the claimant as a condition precedent to receiving an initial compensation award.

(2) The treatment of section 71.05 (6) (b) ²⁵¹ ~~48~~ of the statutes first applies to taxable years beginning on January 1 of the year in which this subsection takes

Insert
NS-TJ

- ① effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) ~~18~~ 51
2 of the statutes first applies to taxable years beginning on January 1 of the year
3 following the year in which this subsection takes effect.

4 (END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2091/lins
JTK.....

INSERTS

INS 2A:

¶ The bill also provides that, with certain exceptions, a surviving spouse or domestic partner, child, parent, or sibling of a person who is entitled to compensation for wrongful imprisonment but who does not receive payment of an award may, within one year of the death of that person, file or pursue on behalf of the deceased person a claim for wrongful imprisonment. Under the bill, any payment ~~what~~ ^{that} would have been payable to the deceased person then becomes payable to the individual who files or pursues the claim, except that if that person is only entitled under the law governing inheritances to inherit a portion of the estate of a deceased person, the individual may only receive the same portion of the payment. Any compensation is independent of any rights that a claimant or any other person may have to inherit assets under any will of the decedent.

INS 6-24:

Crime Specified
in S.
939.632
(1)(c) 1. or 2.

(c) Paragraph (a) does not apply to a person who is convicted of a violent ~~felony~~ after his or her release from imprisonment. A person who is ineligible to petition for compensation under this paragraph is also ineligible to receive any award of compensation that has not been paid.

(2m) (a) In this subsection, an individual who has the right to inherit assets of a person is limited to a surviving spouse or domestic partner, child, parent, or sibling, except to the extent that that individual's right to inherit assets is limited

* or precluded under s. 852.01 ^{who would have a right to inherit assets of the person}

(b) Any individual specified in par. (a) who has the right to inherit assets of a person who has the right to petition the claims board for compensation under sub. (2) may, within one year after the death of such a person, exercise the rights of the person to petition for compensation under sub. (2) (a) on behalf of the deceased person. If more than one individual has that right, the individuals having that right may file a joint petition or any individual or individuals may file a petition for

whatever portion of the compensation that would otherwise be payable to the deceased person that the individual or individuals would be entitled to receive as an inheritance had the award been paid before the death of the decedent. If, at the time of death of a person, ~~the person qualifies or would qualify to receive compensation~~ ^{compensation under sub. (2)(a)} is payable to the person under sub. (2)(a) but has not been paid, any such individual or individuals may, within one year of the death of the person, file a claim with the claims board for compensation to be awarded on the decedent's behalf in whatever share of the compensation that was payable to the petitioner that the individual or individuals would be entitled to receive as an inheritance. The claims board shall pay a claim filed by any individual under this subsection if the board determines that the individual or individuals are entitled to be paid under this subsection.

(c) An individual's right to exercise the rights of a deceased person or to file a claim on a decedent's behalf is independent of any right to inherit from the decedent under the decedent's will. Any compensation paid to any individual under this subsection is not a part of the decedent's estate for purposes of the decedent's will.

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2091/lins
JTK.....

*The handwritten changes here
have been transferred to the
Inserts copy.*

INS 2A:

The bill also provides that, with certain exceptions, a surviving spouse or domestic partner, child, parent, or sibling of a person who is entitled to compensation for wrongful imprisonment but who does not receive payment of an award may, within one year of the death of that person, file or pursue on behalf of the deceased person a claim for wrongful imprisonment. Under the bill, any payment what would have been payable to the deceased person then becomes payable to the individual who files or pursues the claim, except that if that person is only entitled under the law governing inheritances to inherit a portion of the estate of a deceased person, the individual may only receive the same portion of the payment. Any compensation is independent of any rights that a claimant or any other person may have to inherit assets under any will of the decedent.

INS 6-24:

(c) Paragraph (a) does not apply to a person who is convicted of a violent felony after his or her release from imprisonment. A person who is ineligible to petition for compensation under this paragraph is also ineligible to receive any award of compensation that has not been paid.

(2m) (a) In this subsection, an individual who has the right to inherit assets of a person is limited to a surviving spouse or domestic partner, child, parent, or sibling, ~~except to the extent that that individual's right to inherit assets is limited~~ *who would have a right to inherit assets of the person* or precluded under s. 852.01.

(b) Any individual specified in par. (a) who has the right to inherit assets of a person who has the right to petition the claims board for compensation under sub. (2) may, within one year after the death of such a person, exercise the rights of the person to petition for compensation under sub. (2) (a) on behalf of the deceased person. If more than one individual has that right, the individuals having that right may file a joint petition or any individual or individuals may file a petition for

whatever portion of the compensation that would otherwise be payable to the deceased person that the individual or individuals would be entitled to receive as an inheritance had the award been paid before the death of the decedent. If, at the time of death of a person, compensation is payable to the person under sub. (2) (a) but has not been paid, any such individual or individuals may, within one year of the death of the person, file a claim with the claims board for compensation to be awarded on the decedent's behalf in whatever share of the compensation that was payable to the petitioner that the individual or individuals would be entitled to receive as an inheritance. The claims board shall pay a claim filed by any individual under this subsection if the board determines that the individual or individuals are entitled to be paid under this subsection.

(c) An individual's right to exercise the rights of a deceased person or to file a claim on a decedent's behalf is independent of any right to inherit from the decedent under the decedent's will. Any compensation paid to any individual under this subsection is not a part of the decedent's estate for purposes of the decedent's will.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2091/1dn

JTK/j:/:....

sec

- date -

Representative Hebl:

Concerning the right of certain individuals to file a claim on behalf of a deceased person who would be eligible to receive compensation under proposed s. 775.05 (2m) of this draft, I have made certain assumptions concerning the persons and circumstances under which claims of this type may be filed. If any of these assumptions does not reflect your intent, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2091/1dn
JTK:sac:ph

August 1, 2013

Representative Hebl:

Concerning the right of certain individuals to file a claim on behalf of a deceased person who would be eligible to receive compensation under proposed s. 775.05 (2m) of this draft, I have made certain assumptions concerning the persons and circumstances under which claims of this type may be filed. If any of these assumptions does not reflect your intent, please let me know.

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

Kuesel, Jeffery

To: Murray, Mike
Cc: Hurley, Peggy
Subject: RE: 3 small changes to LRB 2091/1 - treatment of wrongfull convicted persons

Mike,

We will take care of the revisions and send you a revised draft.

Jeffery T. Kuesel
Wisconsin Legislative Reference Bureau
P.O. Box 2037
Madison, WI 53701-2037
(608) 266-6778
Jeffery.Kuesel@legis.wisconsin.gov

From: Murray, Mike
Sent: Wednesday, September 18, 2013 10:40 AM
To: Hurley, Peggy; Kuesel, Jeffery
Subject: 3 small changes to LRB 2091/1 - treatment of wrongfull convicted persons

Hi Peggy and Jeff,

Reps Bies and Hebl would like to make 3 changes to that draft as soon as possible to get it ready for introduction. I've listed the changes below. Please let me know if you have any questions. Thanks so much!

Mike

- ✓ 1. Make the bill applicable to anyone who files a claim and was released on or after January 1, 1990.
- 2. Is there a way to make them immediately eligible upon winning their claim to pay into the state health insurance plan instead of having to wait until 2015? Is that b/c that is the next open enrollment? It would be nice to allow them immediate access to health care.
- ✓ 3. On p. 8, lines 13-14, the bill requires that "the department of administration shall promptly refer the petition to the division of hearings and appeals" after DOA receives the petition. Instead of the term promptly, we would like to require referral to the division of hearing and appeals within 5 days. Same thing for the DOA referral of the prosecuting DA's request for a hearing on p. 8, line 18.

Mike Murray
Office of Rep. Gary Hebl
46th Assembly District



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2091/1

JTK/MES/PJH/RAC:sac:ph

In: 9/25/13

Due
Fri 9/27
if possible

↑ ↑ stays
/TJD

2013 BILL

SA✓

Regen Cat

(H)

1 AN ACT *to renumber and amend* 775.05 (2); *to amend* 20.505 (4) (d), 40.51 (1),
2 227.03 (5), 775.05 (3) and (4) and 775.05 (5); and *to create* 20.515 (1) (ds),
3 20.515 (1) (g), 40.516, 71.05 (6) (b) 51., 227.43 (1) (bw), 301.051, 775.05 (2) (b)
4 and (c) and (2m), 775.05 (4m) and (4r), 808.085, 977.05 (4) (jr) and 977.05 (4)
5 (jw) of the statutes; **relating to:** resolution of claims against the state for
6 wrongful imprisonment of innocent persons, exempting from taxation certain
7 amounts an individual receives from the claims board or legislature, and
8 making appropriations.

health benefits for wrongfully
imprisoned persons

Analysis by the Legislative Reference Bureau

Currently, the state claims board is directed to hear petitions for compensation by persons who are released from imprisonment for crimes of which they claim to be innocent. The board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing that he or she was innocent. If the board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the board must award the petitioner compensation not to exceed \$25,000 total nor more than \$5,000 for each year of imprisonment. This

BILL

amount includes any expenses for attorney fees, costs, and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate.

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and who claims to be innocent of the crime for which he or she was imprisoned, the board must refer the petition to the Division of Hearings and Appeals in the Department of Administration (DOA). The bill then allows either DOA or the office of the prosecutor who prosecuted the petitioner to file a written request with the claims board for a hearing within 30 days after the original petition is filed with the board. If a timely request for a hearing is filed, or if the division concludes that it cannot determine the petitioner's eligibility for compensation without a hearing, the division must hold a hearing within 60 days after the petition is filed. If a timely request for a hearing is not filed and the division is able to determine that the petitioner is eligible for compensation without a hearing, the division must decide the matter without a hearing, except that the division must afford a petitioner an opportunity for a hearing before denying compensation to the petitioner. If a hearing is held, the bill allows the petitioner to be represented by a public defender. If a hearing is held, the division appoints a hearing examiner to hear the petition. If no hearing is held, the division decides the matter without a hearing. The hearing examiner makes findings and issues a decision concerning whether the petitioner is entitled to compensation. The findings must be based upon the preponderance of evidence (a lesser evidentiary standard than clear and convincing evidence). The petitioner need not show that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation. If the hearing examiner's finding is in the affirmative, the examiner must award compensation to the petitioner in an amount that the examiner considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the amount of compensation is fixed at a rate of \$50,000 per year or any portion thereof and there is no limit on the total amount of an award. The \$50,000 annual rate is subject to annual adjustment based upon changes in the cost of living. In addition, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The bill provides that no person may file a claim for wrongful imprisonment or be paid an award for such imprisonment as a result of a conviction resulting in imprisonment for a crime if the imprisoned person is also imprisoned as the result of a conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony or if the imprisoned person is convicted of one or more certain violent crimes after his or her release from imprisonment.

BILL

The bill also provides that, with certain exceptions, a surviving spouse or domestic partner, child, parent, or sibling of a person who is entitled to compensation for wrongful imprisonment but who does not receive payment of an award may, within one year of the death of that person, file or pursue on behalf of the deceased person a claim for wrongful imprisonment. Under the bill, any payment that would have been payable to the deceased person then becomes payable to the individual who files or pursues the claim, except that if that person is only entitled under the law governing inheritances to inherit a portion of the estate of a deceased person, the individual may only receive the same portion of the payment. Any compensation is independent of any rights that a claimant or any other person may have to inherit assets under any will of the decedent.

Under current law, the Group Insurance Board, attached to the Department of Employee Trust Funds, contracts on behalf of the state for the purpose of providing health care coverage to state employees. This bill permits individuals who receive compensation from the state for wrongful imprisonment to elect, for up to ten years, health care coverage under plans offered by the Group Insurance Board to state employees beginning on January 1, 2015. Under the bill, these individuals would be required to pay the same health insurance premium amounts that state employees are required to pay, with the balance of the premium cost paid by the state.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department of corrections (DOC) and local aid agencies, and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

The bill also exempts from taxation the payments that an individual, or his or her estate, receives from the claims board, or from the state legislature as a result of claims board action.

The bill initially applies with respect to claims filed by persons who are released on or after January 1, 2006, from imprisonment for crimes of which they claim to be innocent.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL**SECTION 1**

20.505 (4) (d) *Claims awards*. A sum sufficient for payment of awards made by the claims board or department of administration under ss. 16.007, 775.05 (4), 775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made by an act of the legislature arising from a claim filed with the claims board which are not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

SECTION 2. 20.515 (1) (ds) of the statutes is created to read:

20.515 (1) (ds) *Payment of health insurance premiums for individuals who receive compensation for wrongful imprisonment*. A sum sufficient to pay the state's share of premium costs for health care benefits and the cost of administering the benefits for individuals under s. 40.516.

SECTION 3. 20.515 (1) (g) of the statutes is created to read:

20.515 (1) (g) *Benefit and coverage payments; health care coverage for individuals who receive compensation for wrongful imprisonment*. All moneys received from individuals under s. 40.516 who elect to be included in a health care coverage plan under s. 40.516 for the payment of benefits and the cost of administering benefits for the individuals.

SECTION 4. 40.51 (1) of the statutes is amended to read:

40.51 (1) The procedures and provisions pertaining to enrollment, premium transmitted and coverage of eligible employees and individuals eligible for health care coverage under s. 40.516 for health care benefits shall be established by contract or rule except as otherwise specifically provided by this chapter.

SECTION 5. 40.516 of the statutes is created to read:

40.516 Health care coverage for individuals who receive compensation for wrongful imprisonment. (1) ~~Beginning~~ Beginning on January 1, 2015, any individual who receives compensation under s. 775.05 after the effective date of

Stet: 108
leave as typed

BILL

1 this subsection.... [LRB inserts date], may elect coverage under any health care
2 coverage plan offered under s. 40.51 (6) for a period not to exceed 10 years.

3 (2) The individual and the state shall jointly pay the full premium cost of health
4 care coverage and the cost of administering the benefits. ^{under sub. (1)} The amount that the
5 individual must pay in health insurance premiums shall equal the amount required
6 to be paid by state employees, as determined by the director of the office of state
7 employment relations under s. 40.05 (4) (ah). The remainder of the premium cost for
8 health care coverage for these individuals shall be paid from the appropriation
9 account under s. 20.515 (1) (ds).

10 SECTION 6. 71.05 (6) (b) 51. of the statutes is created to read:

11 71.05 (6) (b) 51. Any amount received by an individual, or the individual's
12 estate, from the claims board under s. 775.05 (4), from the legislature under the
13 process described in s. 775.05 (4), or from a financial assistance award granted under
14 s. 808.085, in the taxable year that relates to the year in which the payment is
15 received.

16 SECTION 7. 227.03 (5) of the statutes is amended to read:

17 227.03 (5) This chapter does not apply to proceedings of the claims board,
18 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that
19 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
20 s. 775.05.

21 SECTION 8. 227.43 (1) (bw) of the statutes is created to read:

22 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
23 conducted under s. 775.05.

24 SECTION 9. 301.051 of the statutes is created to read:

BILL**SECTION 9**

1 **301.051 Wrongful conviction; transition plan.** Not more than 5 days after
2 a court issues an order for a plan requested by an inmate pursuant to 808.085 (1) (a),
3 the department shall create a transition to release plan for the inmate. The plan shall
4 do all of the following:

5 (1) Provide the inmate with a written list of community resources available to
6 the inmate upon his or her release from prison, including temporary housing and
7 emergency shelters, food banks, education and job assistance, and health care
8 services in the county into which the inmate will be released. The department shall
9 maintain up-to-date lists with contact information for each county in the state.

10 (2) Provide the inmate with an individual counseling session with a person
11 trained by the department or the county into which the inmate will be released to
12 assist inmates in the transition to release from prison.

13 (3) Schedule an appointment, set for not later than 2 weeks after the inmate's
14 date of release, for the inmate to meet with a social worker or aid program
15 administrator for the county into which the inmate will be released.

16 **SECTION 10.** 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and
17 amended to read:

18 775.05 (2) (a) ~~Any~~ Except as provided in pars. (b) and (c), any person who is
19 imprisoned as the result of his or her conviction for a crime in any court of this state,
20 of which crime the person claims to be innocent, and who is released from
21 imprisonment for that crime after March 13, 1980, may petition the claims board for
22 compensation for such imprisonment. ~~Upon~~ Within 5 days after receipt of the
23 petition, the ~~claims board~~ department of administration shall transmit a copy
24 thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced

BILL

1 the petitioner for the conviction which is the subject of the claim, or their successors
2 in office, for the information of these persons.

3 **SECTION 11.** 775.05 (2) (b) and (c) and (2m) of the statutes are created to read:

4 775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as
5 the result of his or her conviction for a felony in any court of this state arising from
6 the same course of conduct that resulted in conviction for the crime of which the
7 person claims to be innocent if the person does not claim to be innocent of that felony.

8 (c) Paragraph (a) does not apply to a person who is convicted of a violent crime
9 specified in s. 939.632 (1) (e) 1. or 2. after his or her release from imprisonment. A
10 person who is ineligible to petition for compensation under this paragraph is also
11 ineligible to receive any award of compensation that has not been paid.

12 (2m) (a) In this subsection, an individual who has the right to inherit assets
13 of a person is limited to a surviving spouse or domestic partner, child, parent, or
14 sibling, who would have a right to inherit assets of the person under s. 852.01.

15 (b) Any individual specified in par. (a) who has the right to inherit assets of a
16 person who has the right to petition the claims board for compensation under sub.
17 (2) may, within one year after the death of such a person, exercise the rights of the
18 person to petition for compensation under sub. (2) (a) on behalf of the deceased
19 person. If more than one individual has that right, the individuals having that right
20 may file a joint petition or any individual or individuals may file a petition for
21 whatever portion of the compensation that would otherwise be payable to the
22 deceased person that the individual or individuals would be entitled to receive as an
23 inheritance had the award been paid before the death of the decedent. If, at the time
24 of death of a person, the person qualified or would qualify to receive compensation
25 under sub. (2) (a) but has not been paid, any such individual or individuals may,

BILL

SECTION 11

1 within one year of the death of the person, file a claim with the claims board for
2 compensation to be awarded on the decedent's behalf in whatever share of the
3 compensation that was payable to the petitioner that the individual or individuals
4 would be entitled to receive as an inheritance. The claims board shall pay a claim
5 filed by any individual under this subsection if the board determines that the
6 individual or individuals are entitled to be paid under this subsection.

7 (c) An individual's right to exercise the rights of a deceased person or to file a
8 claim on a decedent's behalf is independent of any right to inherit from the decedent
9 under the decedent's will. Any compensation paid to any individual under this
10 subsection is not a part of the decedent's estate for purposes of the decedent's will.

11 **SECTION 12.** 775.05 (3) and (4) of the statutes are amended to read:

12 775.05 (3) ~~After hearing the evidence on the petition, the claims board~~
13 ~~receipt of~~ a petition under sub. (2) (a), the department of administration shall
14 ~~promptly~~ refer the petition to the division of hearings and appeals. No later than 30
15 days after the petition is filed, the department of administration or the office of the
16 prosecutor who was responsible for prosecuting the petitioner may file a written
17 request with the claims board for an evidentiary hearing on the petition. The
18 ~~department of administration shall promptly refer the request to the division.~~ If a
19 timely request for a hearing is filed, or if the division concludes that it cannot
20 determine the petitioner's eligibility for compensation without a hearing, the
21 division shall hold a hearing on the petition no later than 60 days after the petition
22 is filed. If no request for a hearing is filed within the time specified in this subsection,
23 and the division is able to determine that the petitioner is eligible for compensation
24 without a hearing, the division shall decide the matter without a hearing, except that
25 the division shall not deny a petition for compensation without affording the

Within 5 days
after the
claims
board
receives

the
hand-
written
material
is under
scored

BILL

1 petitioner an opportunity for a hearing. The division shall find either that the
2 preponderance of evidence is clear and convincing demonstrates that the petitioner
3 was innocent of the crime for which he or she suffered imprisonment, or that the
4 preponderance of evidence is not clear and convincing does not demonstrate that he
5 or she was innocent.

6 (4) If the ~~claims board~~ division of hearings and appeals finds that the
7 preponderance of evidence demonstrates that the petitioner was innocent and that
8 he or she did not by his or her act or failure to act contribute to bring about the
9 conviction and imprisonment for which he or she seeks compensation, the claims
10 board of the crime for which he or she was imprisoned, the division shall find the
11 amount which will equitably compensate the petitioner, not to exceed \$25,000 and
12 at a rate of compensation not greater than \$5,000 of \$50,000, or the amount
13 determined under sub. (4m), whichever applies, per year or any portion thereof, for
14 the imprisonment. Compensation awarded by the claims board In addition, the
15 division shall include find any amount to which the board finds the petitioner is
16 entitled for reasonable, actual attorney fees, together with all costs and
17 disbursements incurred by the petitioner in his or her defense, post-conviction, and
18 compensation proceedings and all fees, surcharges, and restitution paid by the
19 petitioner as a result of his or her arrest and imprisonment. The division shall
20 subtract any moneys received by the petitioner under s. 808.085. If the claims board
21 division finds that the amount it is able to award find is not an adequate
22 compensation it shall submit a report specifying an amount which it considers
23 adequate to the chief clerk of each house of the legislature, for distribution to the
24 legislature under s. 13.172 (2). Upon conclusion of the proceeding, the division shall
25 transmit its findings and decision to the claims board, which shall award the

BILL

1 compensation specified in the decision and order disbursement of the award to the
2 petitioner or any other individual who is entitled to receive a payment from the
3 appropriation under s. 20.505 (4) (d).

4 **SECTION 13.** 775.05 (4m) and (4r) of the statutes are created to read:

5 775.05 (4m) On April 1 of each year, the claims board shall adjust the
6 maximum amount specified in sub. (4) to reflect any changes in the U.S. consumer
7 price index for all urban consumers, U.S. city average, as determined by the U.S.
8 department of labor, for the 12-month period ending on the preceding December 31.
9 The board shall publish the adjusted amount so determined in the Wisconsin
10 administrative register.

11 (4r) At any hearing conducted under this section, the petitioner may be
12 represented by counsel of his or her own choosing. The department of administration
13 shall represent the interests of the state.

14 **SECTION 14.** 775.05 (5) of the statutes is amended to read:

15 775.05 (5) The claims board shall keep a complete record of ~~its~~ the proceedings
16 in each case petition under this section and of all the evidence related to the petition.
17 The findings and decision of the division of hearings and appeals and the award of
18 the claims board shall be subject to review as provided in ch. 227.

19 **SECTION 15.** 808.085 of the statutes is created to read:

20 **808.085 Wrongful conviction; relief.** (1) If a court acts under s. 808.08 to
21 release a person from confinement in a prison, the person may petition the court for
22 any or all of the following:

23 (a) A court order directing the department of corrections to create a transition
24 to release plan.

BILL

1 (b) A financial assistance award not to exceed 133 percent of the federal poverty
2 level for up to 14 months, or while proceedings under s. 775.05 are pending,
3 whichever is shorter.

4 (c) Sealing of all records related to the case. Records sealed under this section
5 shall be accessible to the person but may not be available for public inspection or
6 through the consolidated court automation program case management system.

7 (2) The court shall, within 10 days after it receives the petition under sub. (1),
8 grant the relief sought if the person's criminal conviction was reversed, set aside, or
9 vacated for reasons not inconsistent with the person's innocence of the crime for
10 which he or she was convicted.

11 (3) If a person who is granted relief under this section is subsequently convicted
12 of the same charges for which he or she was granted relief, or if his or her conviction
13 is reinstated, the person shall repay any financial assistance award granted under
14 this section and all records related to the case shall be unsealed.

15 (4) To the extent it is not contrary to or inconsistent with federal law, financial
16 assistance a person receives pursuant to this section may not be included as income
17 for the purpose of determining whether the person is indigent under rules
18 promulgated under ch. 977 or for the purpose of determining the person's eligibility
19 for any program for which the department of health services or the department of
20 children and families provides services, benefits, or other assistance under ch. 49.

21 **SECTION 16.** 977.05 (4) (jr) of the statutes is created to read:

22 977.05 (4) (jr) At the request of a person determined by the state public
23 defender to be indigent or upon referral of any court, represent the person in
24 proceedings under s. 775.05.

25 **SECTION 17.** 977.05 (4) (jw) of the statutes is created to read:

BILL

1 977.05 (4) (jw) At the request of an inmate determined by the state public
2 defender to be indigent or upon referral of any court, represent the person in
3 proceedings under s. 808.085.

4 **SECTION 18. Initial applicability.**

5 (1) This act first applies with respect to petitions filed by persons who are
6 released on or after January 1, ~~2006~~¹⁹⁹⁰, from imprisonment for crimes of which they
7 claim to be innocent. If a person was released from imprisonment on or after January
8 1, ~~2006~~¹⁹⁹⁰, and accepted compensation from this state for wrongful imprisonment prior
9 to the effective date of this subsection, the person may petition for additional
10 compensation and compensation shall be awarded to the extent payable under
11 section 775.05 of the statutes notwithstanding any release signed by the claimant as
12 a condition precedent to receiving an initial compensation award.

13 (2) The treatment of section 71.05 (6) (b) 51. of the statutes first applies to
14 taxable years beginning on January 1 of the year in which this subsection takes
15 effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) 51.
16 of the statutes first applies to taxable years beginning on January 1 of the year
17 following the year in which this subsection takes effect.

18 (END)

INS NS-TJD

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2091/2insTD
TJD:.....

INSERT ANALYSIS TJD

During the time before January 1, 2015, this bill makes these individuals eligible for health care benefits through the Medical Assistance program BadgerCare Plus, if the federal government does not disapprove the Department of Health Services providing Medical Assistance to these individuals.

(END INSERT ANALYSIS TJD)

INSERT NS-TJD

SECTION 1. Nonstatutory provisions.

(1) MEDICAL ASSISTANCE FOR WRONGFULLY IMPRISONED PERSONS. Notwithstanding the eligibility criteria under section 49.471 (4) (a) of the statutes, any individual who receives compensation under section 775.05 of the statutes after the effective date of this subsection is eligible for the Medical Assistance program under section 49.471 of the statutes during the period before January 1, 2015. The department of health services shall request any approval from the federal department of health and human services that is necessary to provide Medical Assistance benefits to those individuals. If federal approval is not necessary or if federal approval is received, the department of health services shall administer benefits under section 49.471 of the statutes to those individuals. If federal approval is not received, the department of health services is not required to administer Medical Assistance benefits to those individuals.

(END INSERT NS-TJD)

Barman, Mike

From: Barman, Mike
Sent: Friday, September 27, 2013 9:59 AM
To: Bruce, Cory
Subject: RE: Bies/Hebl request for early fiscal

Good morning,

I will submit your un-introduced draft (LRB-2091/2) to DOA for agency FE assignment.
Please let me know if I can be of further assistance.

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

From: Bruce, Cory
Sent: Friday, September 27, 2013 9:44 AM
To: Barman, Mike
Cc: Murray, Mike
Subject: Bies/Hebl request for early fiscal

Mike,
We'd like to request an early fiscal on the attached bill draft.

Thanks,
Cory
Bies Office

Parisi, Lori

From: Murray, Mike
Sent: Monday, October 07, 2013 9:17 AM
To: LRB.Legal
Subject: Draft Review: LRB -2091/2 Topic: Treatment of Wrongfully Convicted Persons

Please Jacket LRB -2091/2 for the ASSEMBLY.

Memo

To: Representative **Hebl**

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB-2091

Version: “/2”

Fiscal Estimate Prepared By: (agency abbr.) SPD

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 10 / 03 / 2013

*** * * * ***

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

- > **If re-drafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.
- > **If introduced** ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 AB 519

Barman, Mike

From: Barman, Mike
Sent: Thursday, October 03, 2013 10:29 AM
To: Rep.Hebl
Cc: Murray, Mike
Subject: LRB-2091/2 (un-introduced) (FE by SPD - attached - for your review)



FE-2091_SPD.PDF

Drafter: JTK, MES, PJH, RAC, and TJD
Subject: State Finance - claims agnst st
Criminal Law - miscellaneous
Correctional System - misc
Administrative Law
Tax, Individual – income

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

Memo

To: Representative Hebl

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB 13-2091

Version: “/2”

Fiscal Estimate Prepared By: DOC

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 10 / 07 / 2013

*** * * * ***

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

- > **If re-drafted ...** please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.
- > **If introduced ...** please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 AB 519

Parisi, Lori

From: Parisi, Lori
Sent: Monday, October 07, 2013 3:10 PM
To: Rep.Hebl
Subject: LRB 13-2091/2 unintroducted FE by DOC attached for your review Subject: treatment of wrongfully convicted persons
Attachments: 13-2091feDOCorg.PDF

Memo

To: Representative Hebl

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB 13-2091

Version: “/2”

Fiscal Estimate Prepared By: ETF

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 10 / 07/ 2013

*** * * * ***

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

> If re-drafted ... please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.

> If introduced ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 AB 519

Parisi, Lori

From: Parisi, Lori
Sent: Monday, October 07, 2013 3:03 PM
To: Rep.Hebl
Subject: LRB 13-2091/2 unintroduced FE by ETF attached for your review Subject: treatment of wrongfully convicted persons
Attachments: 13-2091feETForg.PDF

Memo

To: Representative Hebl

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB-2091

Version: " /2 "

Fiscal Estimate Prepared By: (agency abbr.) DA

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 10 / 11 / 2013

★ ★

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

- > **If re-drafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file "guts" ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.
- > **If introduced** ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 AB 519

Barman, Mike

From: Barman, Mike
Sent: Friday, October 11, 2013 10:00 AM
To: Rep.Hebl
Cc: Murray, Mike
Subject: LRB-2091/2 (un-introduced) (FE by DA - attached - for your review)



FE-2091_DA.pdf

Drafter: JTK
Subject: State Finance - claims agnst st
Criminal Law - miscellaneous
Correctional System - misc
Administrative Law
Tax, Individual – income

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

Memo

To: Representative **Hebl**

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB-2091

Version: “ /2 ”

Fiscal Estimate Prepared By: (agency abbr.) DOR

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 10 / 29 / 2013

*** * * * ***

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

- > **If re-drafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.
- > **If introduced** ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 AB 519

Barman, Mike

From: Barman, Mike
Sent: Tuesday, October 29, 2013 10:30 AM
To: Rep.Hebl
Cc: Murray, Mike
Subject: LRB-2091/2 (un-introduced) (FE by DOR - attached - for your review)



FE-2091_DOR.pdf

Drafters: JTK/MES/PJH/RAC/TJD

Subject: State Finance - claims agnst st
Criminal Law - miscellaneous
Correctional System - misc
Administrative Law
Tax, Individual - income

Mike Barman (Lead Program Assistant)

State of Wisconsin - Legislative Reference Bureau - Legal Section - Front Office
1 East Main Street, Suite 200, Madison, WI 53703
(608) 266-3561 / mike.barman@legis.wisconsin.gov

Memo

To: Representative Hebl

(The Draft's Requester)

Per your request ... the attached fiscal estimate was prepared for your un-introduced 2013 session draft.

LRB Number: LRB-2091

Version: “/2”

Fiscal Estimate Prepared By: (agency abbr.) DOA

If you have questions about the enclosed fiscal estimate, you may contact the state agency representative that prepared the fiscal estimate. If you disagree with the enclosed fiscal estimate, please contact the LRB drafter of your proposal to discuss your options under the fiscal estimate procedure.

Entered In Computer And Copy Sent To Requester Via E-Mail: 11 / 18 / 2013

★ ★

To: LRB – Legal Section PA's

Subject: *Fiscal Estimate Received For An Un-introduced Draft*

- > **If re-drafted** ... please insert this cover sheet and attached early fiscal estimate into the drafting file “guts” ... after the draft's old version (the version that this fiscal estimate was based on), and just before re-draft of the updated version.
- > **If introduced** ... please make sure the attached fiscal estimate is for the **current version** ... write the draft's new introduction number below and give this packet to Mike (or Lori) to re-process the fiscal estimate (w/intro. number included).

THIS DRAFT WAS INTRODUCED AS: 2013 AB 519

Barman, Mike

From: Barman, Mike
Sent: Monday, November 18, 2013 3:45 PM
To: Rep.Hebl
Cc: Murray, Mike
Subject: LRB-2091/2 (un-introduced) (FE by DOA - attached - for your review)



FE-2091_DOA.pdf

Drafters: JTK/MES/PJH/RAC/TJD

Subject: State Finance - claims agnst st
Criminal Law - miscellaneous
Correctional System - misc
Administrative Law
Tax, Individual - income